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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 ECOLOGICAL RIGHTS FOUNDATION, et al.,

12 Plaintiffs,

13 vs.

14 FEDERAL EMERGENCY MANAGEMENT  
15 AGENCY,

16 Defendant.  
17

Case No.: 3:17-cv-02788-JD

**STIPULATION OF VOLUNTARY  
DISMISSAL**

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2 *Rights Foundation and Humboldt Baykeeper*

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**STIPULATION OF VOLUNTARY DISMISSAL**

WHEREAS, in November 2016, FEMA undertook an assessment of the effects of the current implementation of the National Flood Insurance Program (“NFIP”), as modified by recent legislation and other proposed program changes, and issued a Biological Evaluation (“BE”) that determined that the NFIP has no effect on listed species or designated critical habitat;

WHEREAS, on May 15, 2017, Plaintiffs filed a complaint in the U.S. District Court for the Northern District of California captioned Ecological Rights Foundation, et al. v. Federal Emergency Management Agency, Case No. 17-cv-02788-JD (“Lawsuit”), alleging that the “no effect” determination in FEMA’s BE was “arbitrary, capricious, an abuse of discretion, and contrary to law” and that FEMA violated the procedural requirements of the Endangered Species Act (“ESA”) and its implementing regulations by failing to initiate and complete ESA Section 7 consultation with the National Marine Fisheries Service (“NMFS”) and U.S. Fish and Wildlife Service (“FWS”) to ensure that its ongoing administration of the NFIP, “an action that may affect listed species in Monterey County, Santa Cruz County, and Humboldt County, does not jeopardize such federally protected species or destroy or adversely modify designated critical habitat” (ECF 1);

WHEREAS, Plaintiffs also had filed two other complaints in the U.S. District Court for the Northern District of California, asserting in Case No. 16-cv-06987 that FEMA failed to consult on implementation of the NFIP in Monterey and Santa Cruz Counties; to consult on implementation of certain FEMA response, recovery, and mitigation programs administered under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, 42 U.S.C. §§ 5121-5206; and to carry out its responsibilities pursuant to ESA Section 7(a)(1) (“Monterey and Santa Cruz County Lawsuit”), and asserting the same claims with respect to Humboldt County in Case No. 16-CV-07252, (“Humboldt County Lawsuit”);

WHEREAS, Plaintiffs and Defendants filed motions for summary judgment in each of the three lawsuits (docketed as ECF 44 and 45 in the Monterey and Santa Cruz County Lawsuit, ECF 47 and 48 in the Humboldt County Lawsuit, ECF 28 and 29 in this Lawsuit);

1 WHEREAS, on May 15, 2019, the Court issued an Order on the parties' motions for summary  
2 judgment in this Lawsuit that granted Plaintiffs' motion and denied Defendants' motion (ECF 57);

3 WHEREAS, on June 4, 2019, the parties stipulated to stay the cases to allow for settlement  
4 negotiations (ECF 59), and the Court approved that stipulation on June 6, 2019 (ECF 60);

5 WHEREAS, in order to resolve these lawsuits, the parties, through their authorized  
6 representatives, and without any admission of fact or law with respect to Plaintiffs' claims, have  
7 reached a settlement resolving the claims raised in Plaintiffs' Complaint (ECF No. 1), as well as the  
8 claims raised in the Complaints in the Monterey and Santa Cruz County Lawsuit (ECF No. 21) and  
9 the Humboldt County Lawsuit (ECF No. 1), including Plaintiffs' claims for awards of attorneys' fees  
10 and litigation costs, which is referenced here for informational purposes only, and is not incorporated  
11 into this Stipulation, nor is it an enforceable order of the Court;

12 WHEREAS the Settlement Agreement resolves the claims raised in Plaintiffs' Complaints,  
13 including Plaintiffs' claims for awards of attorneys' fees and litigation costs;

14 WHEREAS the Settlement Agreement calls for the filing of this Stipulation of Voluntary  
15 Dismissal as set forth below and in the attached proposed Order;

16 NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

17 All counts of the Complaints in the above-captioned cases shall be, and upon entry of the  
18 order below, dismissed without prejudice.

19 It is so stipulated.

20  
21 DATED: 1/13/20

22  
23 /s/Jason R. Flanders

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Counsel for Plaintiffs

1 DATED: 1/13/20

2  
3 /s/Rickey D. Turner, Jr.

4 RICKEY D. TURNER, JR.

5 U.S. Department of Justice

6 Environ. & Natural Resources Division

7 Wildlife & Marine Resources Section

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12 Attorneys for Defendant

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14 DATED: 1/13/20

15 /s/Alison C. Finnegan

16 ALISON C. FINNEGAN, Trial Attorney

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